

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE TO ESTABLISH A PROCESS FOR ISSUANCE OF COASTAL SAGE SCRUB HABITAT LOSS PERMITS AND DECLARING THE URGENCY THEREOF TO TAKE EFFECT IMMEDIATELY

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and declares that:

- (a) In March, 1993 the Federal government listed the coastal California gnatcatcher as a threatened species under the Endangered Species Act of 1973 (16 U.S.C. §1531 et seq., hereinafter, the "Act"). The Act makes it a violation of federal law to carry out any activity which will result in a take of the species. "Take" of the gnatcatcher, broadly defined in the Act to include harm to or harassment of the species, is prohibited.
- (b) The U. S. Fish and Wildlife Service has promulgated a special rule under Section 4(d) of the Act, which will allow incidental take of the species if it results from activities which are conducted pursuant to either: (1) the State of California's Natural Community Conservation Planning Act of 1991 ("NCCP") and in accordance with an approved NCCP plan prepared consistent with the State's NCCP Conservation and Process Guidelines; or (2) (during the period that such an NCCP plan is being prepared), the NCCP Conservation Guidelines and Process Guidelines published by the California Department of Fish and Game, if within an area under the jurisdiction of a local government agency which is enrolled and actively engaged in the preparation of an NCCP plan. This special rule became effective on December 10, 1993.
- (c) The NCCP Conservation Guidelines and Process Guidelines call for the regulation of all coastal sage scrub within the region, and establish a planning process for the protection of this habitat. The Guidelines further provide a process for issuance of habitat loss permits which local government agencies may adopt. Because the County of San Diego has formally enrolled in the NCCP process and is actively engaged in the preparation of an NCCP plan for the protection of coastal sage scrub within the area under its jurisdiction, under the special rule promulgated under Section 4(d), incidental take of the gnatcatcher would not be a violation of the Act if authorized by a habitat loss permit issued by the County pursuant to the NCCP Conservation Guidelines and Process Guidelines.

- (d) Without such a habitat loss permit process under Section 4(d), no development of habitat occupied by the gnatcatcher may occur unless authorized under Sections 7 or 10(a) of the Act. Sections 7 and 10(a) set forth a permitting process which can take several years to complete. Failure to adopt a habitat loss permit process, thus requiring that proposed land development applications proceed under Section 7 and 10(a) processes, would halt all progress of development of occupied habitat in the region for a substantial time.
- (e) Sections 7 and 10(a) of the Act only regulate occupied coastal sage scrub habitat. The NCCP process contemplates protection of all coastal sage scrub habitat, which will result in protection of many species in addition to the coastal California gnatcatcher.
- (f) Regulation of impacts to coastal sage scrub within the County is necessary immediately because the Section 4(d) rule allows only 5% of all coastal sage scrub remaining in the region to be disturbed. Until the requirements of this ordinance are imposed, coastal sage scrub unoccupied by the gnatcatcher will continue to be disturbed, posing a serious threat to the viability of the NCCP plan and foreclosing the County's options in prioritizing projects for the public peace, health and safety. The preservation of the public peace, health and safety require that projects which impact coastal sage scrub be reviewed in terms of impacts to this regional resource, not individually.
- (g) Adoption of this ordinance is also necessary on an urgency basis to eliminate the need for and the delays and costs of procuring incidental take permits under Sections 7 or 10(a) of the Act on an individual project basis. The preservation of the public peace, health and safety require that development in the region proceed with a reasonable degree of certainty.

Section 2. Division 6 is hereby added to Title 8 of the San Diego County Code, to read as follows:

#### DIVISION 6 - MISCELLANEOUS LAND USE REGULATIONS

##### Chapter 1. Endangered Species

##### Section 86.101. Definitions.

For purposes of this chapter, the following words and phrases shall have the following meanings:

(a) **Biological Assessment:** A field survey which evaluates the quality of the habitat and assesses the presence or absence of the coastal California gnatcatcher, and which is performed in accordance with guidelines established by the U.S. Fish and Wildlife Service.

(b) **Director:** The Director of Planning and Land Use.

(c) **Habitat Loss Permit:** A permit issued by the Director authorizing the disturbance or removal of coastal sage scrub whether or not occupied by the California gnatcatcher.

(d) **Mitigation Plan:** A plan proposed by the applicant for a Habitat Loss Permit which will result in no net loss of coastal sage scrub habitat value as defined by the U. S. Fish and Wildlife Service and the California Department of Fish and Game and which is consistent with the NCCP Conservation Guidelines and Process Guidelines. The plan shall identify a funding source and shall provide a form of security acceptable to the Director to ensure that the plan will be accomplished.

(e) **NCCP Conservation Guidelines and Process Guidelines:** Those documents entitled "Southern California Coastal Sage Scrub Natural Community Conservation Planning Conservation Guidelines" and "Southern California Coastal Sage Scrub Natural Community Conservation Planning Process Guidelines," both dated November, 1993, which are on file with the Clerk of the Board of Supervisors as Document No. 758984. Said documents are referred to as the "State's NCCP Conservation and Process Guidelines" by the special rule promulgated by the U.S. Fish and Wildlife Service for the coastal California Gnatcatcher under Section 4(d) of the Endangered Species Act of 1973, published at Section 17.41(b) of Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations.

#### Section 86.102. Permit Required.

Prior to approval or issuance of any of the following types of land development applications, the issuing authority shall determine whether any portion of the property subject to such permit contains the coastal sage scrub habitat type:

- a) Grading permit pursuant to either Section 87.202 or Section 87.210 of this Code;
- b) Improvement Plan submitted to the Director of Public Works in connection with any land development project; or
- c) Grading and Clearing Permit pursuant to Section 2(b) of Ordinance No. 7415 as amended.

If the property is determined to contain the coastal sage scrub habitat type, the land development permit or approval shall not

be issued unless a Habitat Loss Permit has first been issued by the Director. If the Director is the issuing authority for the land development permit or approval, the Habitat Loss Permit may be issued concurrently with the land development permit or approval.

**Section 86.103. Voluntary Applicants.**

Any governmental agency, public utility, or person who voluntarily determines to apply for a Habitat Loss Permit may submit an application for such a Permit.

**Section 86.104. Procedures and Standards.**

The Director shall follow the procedures and comply with the standards set forth in the NCCP Conservation Guidelines and Process Guidelines, in processing and determining whether to issue the Habitat Loss Permit. A biological assessment and mitigation plan shall be submitted as part of the application for a Habitat Loss Permit.

**Section 86.105. Exemptions.**

Notwithstanding Section 86.102, no Habitat Loss Permit shall be required for:

(a) Any project for which it is determined by the Board of Supervisors that application of this Ordinance would result in the applicant being deprived of all reasonable economic use of property without compensation, in violation of Federal or State Constitutional prohibitions.

b) Any project for which the Director makes a finding with the concurrence of the U.S. Fish and Wildlife Service that:

1. A final map was approved prior to March 2, 1994 and is listed on Schedule A, attached hereto; and

2. The property is not occupied by the coastal California gnatcatcher; and

3. Issuance of the permit referenced in Section 86.102 pursuant to the final or parcel map will not preclude the development of preserves in the future.

**Section 3. Section 87.202.2 is hereby added to the San Diego County Code, to read as follows:**

**Section 87.202.2. Habitat Loss Permit.**

No permit required by either Section 87.202 or Section 87.210 shall be issued, unless Section Chapter 1 of Division 6 of Title 8 of this Code has been complied with, regarding Habitat Loss Permits.

Section 4. This ordinance is adopted as an urgency measure necessary for the immediate preservation of the public peace, health and safety pursuant to Government Code Section 25123(d), and shall take effect immediately upon its adoption. The facts constituting such urgency are set forth in Section 1 of this ordinance, above.

Section 5. Publication. Before the expiration of fifteen (15) days after the date of adoption of this ordinance, a summary shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED, AND ADOPTED this second day of March, 1994.

PAM SLATER  
Chairwoman of the Board of  
Supervisors of the County of San  
Diego, State of California

The above ordinance was adopted by the following vote:

Supervisor Brian P. Bilbray	voting "Aye"
Supervisor Dianne Jacob	voting "Aye"
Supervisor Pam Slater	voting "Aye"
Supervisor Leon L. Williams	being absent
Supervisor John MacDonald	voting "Aye"

ATTEST my hand and the seal of the Board of Supervisors this second day of March, 1994.

THOMAS J. PASTUSZKA  
Clerk of the Board of Supervisors



By Dora Ceseña, Deputy

Ordinance No. 8365  
3/2/94 (3)

Approved As To Form & Legality  
COUNTY COUNCIL  
By William W. Taylor, Jr.  
March 7, 1994

SCHEDULE A

TENTATIVE MAP	NAME	DEVELOPER
2546-1	Borrego Springs Park Annex #2	Lubanko
2971-1	Groves of San Luis Rey Down	Urlick & Hollis
3564-2	Oak Creek Unit #3	National Pacific
3564-3	Oak Creek Unit #4	National Pacific
3618-1	Erin Vale	Armstrong & Mch
3623-1	Rancho Dehesa Unit 1 - 4	NU Pacific Co.
3649-1	Valle de Monserate	Rancho Monserate
3702-1	High Meadow Ranch Unit #1	Vicar Partners
3702-2	High Meadow Ranch Unit #2	Vicar Partners
3703-1	Rancho La Cuesta #1	Tustin Village Inc.
3703-2	Rancho La Cuesta #2	Tustin Village Inc.
3703-3	Rancho La Cuesta #3	Tustin Village Inc.
3719-1	South Fork Creek	Sandavol Const.
3725-3	Rancho Montclair Unit #3	Jon Head
3729-1	Sweetwater Knolls	Lakeview Custom
3734-2	Valle de Monserate #2	Rancho Monserate
3786-1	Valle de Monserate #3	Rancho Monserate
3832-0	Palo Verde Ranch West #10	Gibraltar Comm.
3832-6	Palo Verde Ranch West #6	Gibraltar Comm.
3832-7	Palo Verde Ranch West #7	Gibraltar Comm.
3832-8	Palo Verde Ranch West #8	Gibraltar Comm.
3832-9	Palo Verde Ranch West #9	Gibraltar Comm.
3909-1	Eucalyptus Meadows	
3982-1	Canyon Park Town Homes	
4016-1	Soldin Place	Flinn Springs
4050-1	Lakeside Acres	Villa Lakeshore
4062-1	Highland Oaks Unit #1	Skylakes Assoc.
4062-2	Highland Oaks Unit #2	Skylakes Assoc.
4159-1	Eagles Crest	Eagle Devel. Corp.

TENTATIVE MAP	NAME	DEVELOPER
4227-1	Rancho Cielo Estates #1	Pac. Cielo Devel.
4227-2	Rancho Cielo Estates #5	Pac. Cielo Devel.
4229-1	Rancho Cielo Estates #1	Pac. Cielo Devel.
4229-2	Rancho Cielo Estates #2	Pac. Cielo Devel.
4229-3	Rancho Cielo Estates #3	Pac. Cielo Devel.
4229-4	Rancho Cielo Estates #4	Pac. Cielo Devel.
4240-1	Gopher Canyon	Morris Co.
4249-2	Lake Rancho Viejo Unit #2	Anden Group
4249-3	Lake Rancho Viejo Unit #3	Blanche Pope
4292-1	Eucalyptus Hills Estates #2	R. F. Kevane
4348-1	Rancho Cielo Estates #3	Pac. Cielo Devel.
4351-1	Mimulus Road	Bunn
4394-2	Vahalla View Estates #2	Singing Hills Dev.
4394-3	Vahalla View Estates #3	Charles Grant
4449-1	East Victoria	Baskinta Enterprises
4459-1	Tierra Rojas Estates	Tierra Rojas Est.
4467-1	Rancho Capitan Homes	Rancho Capitan JT
4469-1	Dos Hermanitas	Tilaca U.S.A.
4470-1	Palm Canyon Estates #1	York Mort. Inv.
4478-1	4S Ranch	4S Ranch Co.
4489-3	Julian Estates Unit #3	Alabama Partner
4500-4	Casitas Unit #4	DiGiorgio Corp.
4501-1	Blossom Ridge	E. Nagler et al.
4515-1	Via Marbella	S.D. 1484 Ltd.
4553-1	Palo Verde Rancho West #12	Rancho Palo Verde
4569-1	Horizon C.C. Unit #1 and 2	Horizon Prop.
4569-3	Horizon C.C. Unit #3	Horizon Prop.
4569-4	Horizon C.C. Unit #4	
4607-1	Almond Hill	

TENTATIVE MAP	NAME	DEVELOPER
4613-1	Ram's Hill C.C. North #1	DiGiorgio Devel.
4613-2	Ram's Hill C.C. North #2	DiGiorgio Devel.
4617-1	Sam Lane	Najd
4618-1	Dewitt Estates	Tavern Road Ltd.
4626-1	Woodson Ranch Unit #1	Davidson Coscan
4626-2	Woodson Ranch Unit #2	Davidson Coscan
4626-3	Woodson Ranch Unit #3	Davidson Coscan
4651-1	Poco Lago	R. Hagey et al.
4653-1	Costa Lago	Niotta
4665-1	Emma	
4669-1	Vista Grande	
4696-1	Los Montanas	
4710-1	Chimney Rock	Duane Deverill
4719-1	Legacy	Wind
4722-1	Palimino Heights	Cirrus Dev. Group
4732-1	Lake Valley	W.R. Schmitt
4760-1	Rancho Farms	Rancho Farms Inves.
4761-1	Proctor Valley	
4768-1	Old Castle Way	Schafer
4780-1	Fruitvale Heights (Plum Ct)	Kensall
4781-1	San Pasqual Trail	Morrison Home
4798-1	Rancho Suenos	Rancho Suenos
4799-1	Rancho Highlands	Seve Catilina

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ORDINANCE NO. 8380 (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE TO EXEMPT MINOR GRADING PERMITS FROM THE COASTAL SAGE SCRUB HABITAT LOSS PERMIT PROCESS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Section 86.102 of the San Diego County Code is hereby amended to read as follows:

Section 86.102. Permit Required.

Prior to approval or issuance of any of the following types of land development applications, the issuing authority shall determine whether any portion of the property subject to such permit contains the Coastal sage scrub habitat type:

- a) Grading permit pursuant to Section 87.202 of this Code;
- b) Improvement Plan submitted to the Director of Public Works in connection with any land development project; or
- c) Grading and Clearing Permit pursuant to Section 2(b) of Ordinance No. 7415 as amended.

If the property is determined to contain the Coastal sage scrub habitat type, the land development permit or approval shall not be issued unless a Habitat Loss Permit has first been issued by the Director. If the Director is the issuing authority for the land development permit or approval, the Habitat Loss Permit may be issued concurrently with the land development permit or approval.

Section 2. Section 87.202 of the San Diego County Code is hereby amended to read as follows:

Section 87.202.2. Habitat Loss Permit.

No permit required by Section 87.202 shall be issued, unless Section Chapter 1 of Division 6 of Title 8 of this Code has been complied with, regarding Habitat Loss Permits.

Section 3. Effective Date. This ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after the date of adoption of this ordinance, a summary shall be published once with the names of the supervisors voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED, AND ADOPTED this 30th day of March, 1994.

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PAM SLATER, Chairwoman  
County of San Diego Board of Supervisors

The above ordinance was adopted by the following vote:

AYES: Bilbray, Jacob, Slater, Williams, MacDonald

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ATTEST my hand and the seal of the Board of Supervisors this 27th day of April, 1994.



THOMAS J. PASTUSZKA  
Clerk of the Board of Supervisors

By

A. Gomez  
Adair Gomez, Deputy

ORDINANCE NO. 8608 (NEW SERIES)

AN ORDINANCE AMENDING THE SAN DIEGO COUNTY CODE  
TO EXEMPT CERTAIN PROJECTS FROM THE COASTAL SAGE SCRUB  
HABITAT LOSS PERMIT PROCESS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 2. Section 86.105 of the San Diego County Code is hereby amended to read as follows:

Section 86.105. Exemptions.

Notwithstanding Section 86.102, no Habitat Loss Permit shall be required for:

(a) Any project for which it is determined by the Board of Supervisors that application of this Ordinance would result in the applicant being deprived of all reasonable economic use of property without compensation, in violation of Federal or State Constitutional prohibitions.

(b) Any project for which the Director makes a finding with the concurrence of the U.S. Fish and Wildlife Service that:

1. A final map was approved prior to March 2, 1994 and is listed on Schedule A, attached hereto; and
2. The property is not occupied by the Coastal California gnatcatcher; and
3. Issuance of the permit referenced in Section 86.102 pursuant to the final or parcel map will not preclude the development of preserves in the future.

(c) Any project which has received a permit pursuant to 16 U.S.C. Sections 1536 or 1539, as amended.

11/15/95 (2)

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL

BY Claudia F. Anguero  
DEPUTY

Section 2. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, it shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED and ADOPTED this 15th day of November 1995.

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DIANNE JACOB  
Chairwoman of the Board of  
Supervisors of the County of San  
Diego, State of California

The above Ordinance was adopted by the following vote:

AYES: Cox, Jacob, Slater  
Absent: Roberts, Horn

ATTEST my hand and the seal of the Board of Supervisors this  
15th day of November, 1995.



THOMAS J. PASTUSZKA  
Clerk of the Board of Supervisors

By L. Monteleone  
Lorena Monteleone, Deputy

Ordinance No. 8608 (New Series)  
11/15/95 (2)